

Message Text

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ORIGIN L-03

INFO OCT-01 EA-11 ISO-00 SCA-01 JUSE-00 CPR-02 EB-11

COME-00 TRSE-00 OMB-01 CIAE-00 DODE-00 PM-07 H-03

INR-10 NSAE-00 NSC-10 PA-04 RSC-01 PRS-01 SPC-03

SS-20 USIA-15 SAM-01 /105 R

DRAFTED BY L/M/SCA:JABOYD:MA

APPROVED BY L/M/SCA:KEMALMBORG

EA/PHL:RTWILLNER

JUSTICE:BRISTAU (SUBS)

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R 052156Z FEB 74

FM SECSTATE WASHDC

TO AMEMBASSY MANILA

INFO CINCPAC

C O N F I D E N T I A L STATE 024103

E.O. 11652, GDS

TAGS: PFOR, RP

SUBJECT: PHILIPPINE REACTION TO SOVEREIGN IMMUNITY ISSUE

REF: MANILA 1051

1. DEPT WAS DISAPPOINTED TO READ REMARKS IN PARA 1 OF REFTEL TO THE EFFECT THAT THE QTE STATE DEPARTMENT REFUSING SUGGEST IMMUNITY TO US COURT IN CASE AGAINST PHILIPPINE EMBASSY UNQTE. AS NOTED PARA 3 IN STATE 238932, DEPARTMENT OFFICIALS INCLUDING LEGAL OFFICER MET ON NOVEMBER 27, 1973, WITH MINISTER BELISARIO AND ECONOMIC OFFICER TELETE TO EXPLAIN PROCEDURES, WHICH INCLUDE LEGAL MEMORANDUM AND CONFERENCE BEFORE DEPARTMENT QTE DECIDES UNQTE ON REQUEST FOR SUGGESTION OF IMMUNITY. NO LEGAL MEMORANDUM WAS CONSIDERED OR CONFERENCE CONVENED IN THIS CASE. HENCE, DEPARTMENT DID NOT, REPEAT NOT, REFUSE REQUEST OF GOP.

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HOWEVER, DURING ONE HOUR DISCUSSION OF THESE PROCEDURES

AND CASES INTERPRETING THE TATE LETTER WHICH SETS FORTH THE RESTRICTIVE THEORY, PERCEPTIVE QUESTIONS BY BELISARIO AND TELETE OF DEPARTMENT LEGAL OFFICER MADE CLEAR THAT DEPARTMENT IN PAST HAD NOT MADE SUGGESTION OF IMMUNITY IN CASES LIKE THE SUBJECT CASE.

2. THUS DEPARTMENT WAS PLEASED WITH EXPEDITIOUS MANNER IN WHICH CASE WAS HANDLED AND BELIEVES THAT BELISARIO

AND TELETE WERE VERY INSIGHTFUL. BUT DEPARTMENT DID NOT DECIDE THE CASE EITHER FOR OR AGAINST GOP AND THE CASE WILL NOT BE REPORTED AS HAVING GONE TO DECISION IN DEPARTMENT RECORDS. DEPARTMENT FAVORS EMBASSY BRINGING THIS DISTINCTION TO ATTENTION OF GOP IN A LOW KEY, MATTER OF FACT FASHION BUT WOULD DEFER TO EMBASSY'S JUDGMENT ON RAISING ISSUE AGAIN AT THIS TIME.

3. DEPARTMENTS OF STATE AND JUSTICE ARE PLEASED TO ACCEPT GOP DECISION TO UTILIZE RESTRICTIVE THEORY EVEN IF NOT UNDER LENIENT INTERPRETATION. EMBASSY MAY INFORM PHILIPPINE OFFICIALS THAT DEPARTMENT POLICY PRECLUDES USG SEEKING BROADER SCOPE OF SOVEREIGN IMMUNITY ABROAD THAN USG WOULD ACCORD TO FOREIGN SOVEREIGNS SUED IN US COURTS. DEPARTMENT TRUSTS THAT EMBASSY WILL INFORM DEPARTMENT IF CIRCUMSTANCE ARISES IN WHICH DIPLOMATIC OR SOVEREIGN IMMUNITY ARE IN ISSUE.

4. DEPARTMENT LOOKS FORWARD TO READING COPY OF CITED CIRCULAR. KISSINGER

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NNN

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